

TENTATIVE RULINGS for CIVIL LAW and MOTION February 11, 2010

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6941

TENTATIVE RULING

Case: **Chairez v. Minaberry**

Case No. CV PM 09-175

Hearing Date: **February 11, 2010** **Department Fifteen** **9:00 a.m.**

Plaintiff's motion to file a third amended complaint is **GRANTED**. (Code Civ. Proc., §§ 472 & 473; Dec. of Lisa L. Kirk, Exhibit 7.) The parties executed a stipulation to allow plaintiff to file the third amended complaint in November 2009. The Court is dismayed by defense counsel's actions in filing an opposition to the motion to amend and the filing of the demurrer and motion to strike the second amended complaint given the executed stipulation to allow plaintiff to file a third amended complaint.

Plaintiff is directed to file the original stipulation to allow plaintiff to file a third amended complaint and to file the third amended complaint with the Court by **February 11, 2010**.

Defendant's request for sanctions is **DENIED**.

Defendant's request for judicial notice is **GRANTED**. (Evid. Code, § 452.)

Plaintiff's objections to Ms. Kirk's declaration supporting State Farm's opposition to the motion to amend are **OVERRULED**. (Evid. Code, §§ 350, 702, 800 and 1200.)

Defendant's motion to strike and demurrer to the second amended complaint are **DROPPED**.

If no hearing is requested, the tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: CMH Manufacturing West, Inc. v. Sacramento SBB Associates, LLC
Case No. CV CV 08-130
Hearing Date: February 11, 2010 **Department Fifteen** **9:00 a.m.**

CMH Manufacturing West, Inc.'s motion for protective order is **DROPPED**. Kevin Clayton was ordered by the Court to appear and give testimony at a deposition to be taken by Sacramento SBB Associates, LLC commencing on November 18, 2009, in Knoxville, Tennessee at the November 12, 2009, hearing on the motion to compel.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312, or further notice is required.

TENTATIVE RULING

Case: Moreida v. State Farm Mutual Automobile Ins. Co.
Case No. CV PM 09-2865
Hearing Date: February 11, 2010 **Department Fifteen** **9:00 a.m.**

Claimant Martha Moreida's motion to quash the subpoena for her employment records is **GRANTED IN PART**. Respondent's subpoena is overbroad to the extent that it seeks production of applications, resumes, tests, evaluations, and disciplinary records or reports. These documents are not relevant to the damages claimant seeks in this action and are disallowed. The deponent is directed, however, to produce attendance records, absence records, sick leave records, sick leave slips, time-off requests, vacation requests, work schedules for the time period of November 13, 2008 through December 1, 2008, and exams, physicals, medical exams, worker's compensation documents, applications and benefits to the extent that they relate to the body parts claimant asserts were injured on November 12, 2008. These documents are relevant to the injuries for which claimant seeks relief. The deponent is also directed to produce non-privileged payroll records (which shall not include income tax returns or W-2s) sufficient to show claimant's lost wages for the time period of November 13, 2008 through December 1, 2008.

Claimant's request for monetary sanctions is **DENIED**. Respondent was substantially justified in opposing the quashing of the entirety of the subpoena.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312, or further notice is required.

TENTATIVE RULING

Case: **People v. Jessica LaChappelle**
Case No. CV PT 10-97

Hearing Date: **February 11, 2010** **Department Fifteen** **9:00 a.m.**

The People are **DIRECTED TO APPEAR** to advise the Court if they intend to file a petition of forfeiture, and if the Yolo Superior Court case number CRF 10-333, is a related criminal action. If the People intend to file a petition of forfeiture, the hearing in this case must be by jury, unless waived by consent of all parties. (Health and Saf. Code, § 11488.5, subd. (c)(2).) If Yolo Superior Court case number CRF 10-333, is the related criminal action, this matter is to be tried in conjunction with that action.

TENTATIVE RULING

Case: **Sahi v. Rabon**
Case No. CV PM 09-49

Hearing Date: **February 11, 2010** **Department Fifteen** **9:00 a.m.**

Agri-Comm Express, Inc.'s motion to compel further responses to form interrogatories and motion to compel further responses to requests for identification and production of documents is moot. Plaintiff served verified, amended discovery responses. Agri-Comm Express, Inc.'s requests for monetary sanctions is **DENIED**. The Court finds that monetary sanctions are not warranted in the circumstances before it. (Calif. Rules of Court, rule 3.1348.)

If no hearing is requested, the tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Young v. CBS Broadcasting, Inc.**
Case No. CV CV 09-449

Hearing Date: **February 11, 2010** **Department Fifteen** **9:00 a.m.**

Requests for judicial notice: Carolyn Young's request for judicial notice is **DENIED**. The request for judicial notice by the defendants CBS Broadcasting, Inc., CBS 13, KOVR-TV Channel 13, Dave Clergen and Kurtis Ming is **DENIED**.

Motions to seal records: The motions to seal by the plaintiff and the defendants are **GRANTED**. (Cal. Rules of Court, rule 2.550-2.551.) Counsel are directed to submit orders that comply with California Rules of Court, rule 2.550(e)(1)(A), as the proposed orders submitted do not comply with this rule.

Plaintiff's evidentiary objections to the Declaration of Thomas R. Burke: The objection to paragraph 4 of this declaration is **SUSTAINED**.

Plaintiff's evidentiary objections to the Declaration of Dave Clergen: Objection numbers 8 (as to statements by Carol Kelly and Mary Jane Mann only), 10 (as to the first quoted sentence only), 11 (as to statements by Mary Jane Mann only), 12-17, 18 (as to "that found her to be in very good shape . . . 86 years old" only), 19, 21, 31-32, 33 (as to "seemed surprised that I had the documents, said I was not supposed to have them" only), 34, 38, 41-44, and 46 are **SUSTAINED**. All other evidentiary objections are **OVERRULED**.

Plaintiff's evidentiary objections to the Declaration of Jeff Glaser: The Court does not rule on the evidentiary objections to this declaration as it does not take notice of any of the documents attached to Mr. Glaser's declaration.

Plaintiff's evidentiary objections to the Declaration of Kurtis Ming: All evidentiary objections to this declaration are **OVERRULED**.

Defendants' evidentiary objections to the Declaration of Christopher H. Whelan: Objection numbers 1-4 and 9 are **SUSTAINED**. All other evidentiary objections are **OVERRULED**.

Defendants' evidentiary objections to the Declaration of Carolyn Young: Objection numbers 1-3 and 7-8 (as to references to "defamation" and "defamatory" only), 11, 13, ¶39 (as to statement by Monika Mann only), ¶55 (as to statement about Monika Mann's deposition only), ¶57 (as to second, third and fourth quoted sentences only), ¶59 (as to last quoted sentence only), ¶61 (as to second quoted sentence only), ¶62 (as to "It was interesting to me . . . Mann had a son" and "He was an obvious witness . . . treatment of his mother" only), ¶65 (as to "That report backed up . . . obvious witnesses he needed to contact" only), ¶¶ 67-71), 15, ¶73 (as to references to "defamatory" only), ¶74 (as to "which confirmed . . . she is incompetent" only), ¶75, ¶76 (as to last quoted sentence only), 17, ¶82 (as to "he knew that neither Dashiell nor Robin Diamond were hired by me" and last quoted sentence only), 18, ¶89 (as to "with knowledge of the falsity . . . truth or falsity" and "defamatory" only), ¶90 (as to the terms "defamation" and "foreseeably republished" and the second quoted sentence only), 19 (as to references to "defamation" and "defamatory" and "understood to be of and concerning me, and understood by the community in their defamatory sense" only), 20, ¶98a, ¶98b (as to first sentence and "Mann's life was not 'hijacked'" only), ¶98c (as to last quoted sentence only), ¶98d (as to last quoted sentence only), ¶99a, ¶99b (as to first three quoted sentences only), ¶99c (as to last four sentences only), ¶99e, ¶100a, ¶100b, ¶101a (as to first and second sentences only), 101b (as to first sentence only), ¶101f, ¶102a (as to first three sentences only), ¶102b, ¶103a, ¶103b, ¶104a, ¶104b, ¶105a, ¶105b, ¶105c, ¶105e, ¶106a, ¶106c, ¶107a (as to first four sentences and "CBS knew at the time of the broadcast . . . abuse her" only), ¶107b, ¶108a (as to first two sentences and last sentence only), ¶108b, ¶109a, ¶109b (as to first four sentences only), ¶109c, ¶110a (as to first two sentences and "After everything was made clear . . . co-trusteeship" only), ¶110b, ¶111a, ¶111b (as to "Yet CBS portray . . . the co-trusteeship" and "Again, if the fact that I was paying . . . deficit, and confusion" only), ¶111c, ¶112a (as to first four sentences only), ¶112b (as to first four sentences only), ¶112c, ¶113a, ¶113b, ¶113c, ¶113d, ¶114a, ¶114b, ¶114c, ¶114e, ¶114f, ¶115a, ¶115b, ¶116a, ¶116b, ¶117a, ¶117b (as to first two sentences and last sentence only), ¶117c (as to last sentence only), ¶117d, ¶118a,

¶118b (as to second sentence only), ¶118d and ¶118e, 22 (as to reference to “defamation” and “defamatory” and “CBS with callous disregard for the truth and for my rights and reputation” only) and 23 (as to reference to “defamation” and “defamatory” only) are **SUSTAINED**. All other evidentiary objections are **OVERRULED**.

Defendants’ threshold showing on their anti-SLAPP motion: Plaintiff’s defamation complaint arises from protected activity within the meaning of Code of Civil Procedure section 425.16, subdivision (e)(4). The issues raised in the subject broadcasts are of interest to the public at large, as demonstrated by the Legislature’s statement when it passed the Omnibus Conservatorship and Guardianship Reform Act of 2006 (Assemb. Bill. No. 1363 (2005-2006 Sess.) § 2), its passage of Assembly Bills 1727 and 1340 in the 2007-2008 Session, the statement of legislative intent in Probate Code section 1800, and the statutory regulation of conservatorships (Prob. Code, §§ 1800 *et seq.*). Read as a whole, the broadcasts at issue concern the devastating effects an alleged improper conservatorship and alleged wrongdoing by a conservator can have on the conservatee, as illustrated by Mary Jane Mann’s case. (Exhibit C to Clergen Declaration; *Carver v. Bonds* (2005) 135 Cal.App.4th 328.) The cases the plaintiff cites are distinguishable.

Plaintiff’s showing of probability of prevailing: When the defendant makes the threshold showing of a “protected activity,” the burden shifts to the plaintiff to demonstrate a probability of prevailing on the claim. (*Sipple v. Foundation For Nat’l Progress* (1999) 71 Cal.App.4th 226, 809.) The plaintiff’s burden has been likened to that in opposing a motion for summary judgment. (*Ibid.*)

Section 425.16 “contemplates consideration of the substantive merits of the plaintiff’s complaint, as well as all available defenses to it”. (*Traditional Cat Ass’n, Inc. v. Gilbreath* (2004) 118 Cal.App.4th 392, 398.) Defendants contend that the plaintiff cannot prevail on her defamation claim because (1) the alleged defamatory statements are absolutely privileged under Civil Code section 47, subdivision (d); (2) the alleged defamatory statements are rhetorical hyperbole or opinion; (3) the plaintiff is a public official or public figure and must, therefore, establish actual malice and she cannot do so; and (4) the plaintiff did not comply with Civil Code section 48a and cannot prove special damages.

Civil Code section 47(d): Civil Code section 47, subdivision (d) is construed broadly to include statements made outside the court proceedings, so long as the “out-of-court statements” do not alter the substance of the privileged statements. (*Sipple v. Foundation For Nat’l Progress, supra*, 71 Cal.App.4th at 241 and 245; *Dorsey v. Nat’l Enquirer, Inc.* (9th Cir. 1992) 973 F.2d 1431, 1437.) Civil Code section 47, subdivision (d) gives the media “a certain amount of literary license.” (*Sipple, supra*, at 242.) A news “report is not to be judged by the standard of accuracy that would be adopted if it were the report of a professional law reporter or a trained lawyer.” (*Jennings v. Telegram-Tribune Co.* (1985) 164 Cal.App.3d 119, 126.)

The motion to strike based on Civil Code section 47, subdivision (d) is **GRANTED** as to alleged defamatory statement numbers 1, 2, 14 (as to “The case ended up . . . Basically taking over her life” only), 15 (statement by Mary Jane Mann), 18, 19 (as to “It turned out that Mary

Jane's personal trust . . . taking control of her life" only), 20, 22 (statement by Carol Kelly), and 24 because these statements capture the "sting" of the proceedings in Sacramento Superior Court case no. 06-PR-01754. (Prob. Code, § 2252; Young Declaration ¶¶ 22-31, 36-38, 47, 81-82 and 99.d. and Exhibits 6-8 and 14 thereto.) The motion is **DENIED** as to all other alleged defamatory statements.

Nonactionable rhetorical hyperbole or opinion: "Rhetorical hyperbole," "lusty and imaginative expression[s] of ... contempt," language used "in a loose, figurative sense," and statements of subjective judgment are not actionable. (*Seelig v. Infinity Broadcasting Corp.* (2002) 97 Cal.App.4th 798; *Nygard, Inc. v. Uusi-Kerttula* (2008) 159 Cal.App.4th 1027; *Campanelli v. Regents of Univ. of Calif.* (1996) 44 Cal.App.4th 572.) The motion made on the ground that the statement is nonactionable hyperbole or opinion is **GRANTED** as to alleged defamatory statement numbers 1, 2, 4 (as to "To feel that I'm a prisoner. Why am I a prisoner?" only), 5, 12 (as to "I am not incompetent" only), 22 (as to "kidnap" and "I mean, these are wild accusations" only), and 23. The motion is **DENIED** as to all other alleged defamatory statements.

Public official or public figure: The evidence presented does not show that the plaintiff is a government employee or that she holds any position in government. (Young Declaration ¶ 19.) There is no evidence that the plaintiff has "substantial responsibility for or control over the conduct of governmental affairs", that she enjoys greater access to the mass media, or that she holds a position which invites public scrutiny and discussion, apart from the "exposure" she has received because of the defendants' broadcasts. (*Mosesian v. McClatchy Newspapers (Mosesian I)* (1988) 205 Cal.App.3d 597.) Based on the above, the Court finds that the plaintiff is not a "public official."

The evidence presented also does not show that the plaintiff voluntarily thrust herself to the forefront of a public controversy in order to influence the resolution of the issues involved. (*Mosesian v. McClatchy Newspapers (Mosesian II)* (1991) 233 Cal.App.3d 1685.) There is no evidence, for example, that the plaintiff invited media attention, enjoyed public notoriety, or was a well-known expert on the issue of conservatorships or a recognized public figure prior to the broadcasts at issue.

Because it has not been established that the plaintiff is a public official or a public figure, it is not necessary to examine whether the plaintiff can establish actual malice.

"Of and concerning" the plaintiff: The motion to strike based on the contention that the alleged defamatory statements are not "of and concerning" the plaintiff is **DENIED**. In the context of Kurtis Ming's investigative news report, the alleged defamatory statements expressly or impliedly concern the plaintiff. Plaintiff is a "direct object of criticism" of the KVOR-13 news report.

Compliance with Civil Code section 48a and proof of special damages: Loss of clients or an employment opportunity following defamation is evidence of recoverable special damages within the meaning of Civil Code section 48a. (*O'Hara v. Storer Communications*,

Inc. (1991) 231 Cal.App.3d 1101, 1112.) Plaintiff can prove special damages because of the defendants' alleged defamatory broadcasts. (Declaration of Laura Stodden Parker; Young Declaration ¶ 20.) Because the plaintiff has demonstrated that she can prove special damages, she has shown that she can recover damages on her defamation claim regardless of whether her demands for retraction satisfy the requirements of Civil Code section 48a, subdivision (a).

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.